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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,191	10/16/2003	Frank Catalano	14460.SUSUI	6666
23552	7590	12/10/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/688,191	Applicant(s) CATALANO, FRANK	
	Examiner David J Parsley	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1-16-04</u> . | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it begins with an implied statement.

Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,264,714 to Gillette.

Referring to claim 1, Gillette discloses a method of transforming a lawn into a stable, healthy plant community that can be maintained as a stable, healthy plant community without use of synthetic non-organic, non-natural pesticides, herbicides or fertilizers, comprising the steps of, during a first growing season implementing a fertilization program utilizing organic-based fertilizers consisting of at least six applications of the organic-based fertilizer to the lawn – see for example the abstract which states that fertilizer can be applied every 50-60 days beginning in early spring and if the fertilizer is applied every 50 days beginning in late March, at least 6 applications can be performed before the end of the year. Gillette further discloses implementing a weed control program utilizing optimal herbicides to suppress any weed communities within the lawn – see for example figure 1 and column 1 lines 18-67, implementing a lawn surface insect pest control program utilizing optimal insecticides to suppress any lawn surface-insect-pests within the lawn – see figure 1 and column 1 lines 18-67 and column 2 lines 1-9, then during a second growing season following the first growing season, continuing the fertilization program utilizing organic-based fertilizers consisting of at least six applications of the organic-based fertilizer to the lawn – see figure 1, the abstract and column 1 lines 18-67, continuing the weed control program utilizing optimal herbicides to suppress any weed communities within the lawn – see for example figure 1 and column 1 lines 18-67, continuing the lawn surface-insect-pest control program utilizing optimal insecticides to suppress any lawn insect pests within the lawn – see for example figure 1, column 1 lines 18-67 and column 2 lines 1-9, implementing a program of biological and natural controls of any lawn pests and weeds – see for example figure 1 and column 1 lines 18-67 and column 2 lines 1-9, implementing a program of pre-emergent crab grass control – see for example figure 1 and column 1 lines 18-67,

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then during the third growing season, after the first and second growing seasons, implementing a fertilization program utilizing organic fertilizers consisting of at least six applications of the organic fertilizer to the lawn – see for example figure 1, the abstract and column 1 lines 18-67, implementing a weed control program utilizing organic herbicides, including continuing the program of pre-emergent crab grass control – see for example figure 1 and column 1 lines 18-67, and implementing a lawn surface insect pest control program utilizing organic insecticides – see for example figure 1, column 1 lines 18-67 and column 2 lines 1-9.

Referring to claim 5, Gillette discloses during the third growing season implementing a program of biological control of root zone grub insect pests and continuing the program of biological and natural controls – see for example figure 1, column 1 lines 18-67 and column 2 lines 1-9.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillette as applied to claim 1 above, and further in view of applicant's background of the invention section of the disclosure.

Referring to claims 2-4, Gillette does not disclose the further steps of during each of the first, second and third growing seasons, performing a detailed soil analysis to measure soil parameters of the soil pH, buffer pH, organic matter content, thatch layer composition, nutrient load, cation exchange capacity and amending the soil to optimize those soil parameters for optimal turfgrass growth, slice seeding the lawn to integrate into the lawn turfgrass community turfgrass seeds that are optimal for the lawn and core aerating a root zone of the lawn by removing root zone cores and over-seeding with optimal turfgrass seeds. Applicant's own admission/discussion of the prior art as seen under the Background of the Invention heading on page 2 lines 2-17 of applicant's disclosure, does disclose that it was well known in the art to perform a detailed soil analysis to measure soil parameters of the soil pH, buffer pH, organic matter content, thatch layer composition, nutrient load, cation exchange capacity and amending the soil to optimize those soil parameters for optimal turfgrass growth, slice seeding the lawn to integrate into the lawn turfgrass community turfgrass seeds that are optimal for the lawn and core aerating a root zone of the lawn by removing root zone cores and over-seeding with optimal turfgrass seeds. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Gillette and the soil analysis, slice seeding and core aerating of the lawn as seen in applicant's disclosure of the prior art, so as to allow for the lawn to grow faster and fuller.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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The following patents are cited to further show the state of the art with respect to lawn/plant treatment methods in general:

U.S. Pat. No. 4,849,006 to Knudson – shows fertilizer and pesticide

U.S. Pat. No. 5,725,630 to Roberts et al. – shows method of fertilizing

U.S. Pat. No. 5,755,058 to Guyot et al. – shows method of fertilizing

U.S. Pat. No. 6,194,193 to Drahos et al. – shows method of fertilizing

U.S. Pat. No. 6,277,814 to Qiu et al. – shows method of fertilizing

U.S. Pat. No. 6,460,290 to Moore et al. – shows method of fertilizing

U.S. Pat. No. 6,560,921 to Roberto – shows organic fertilizer

U.S. Pat. No. 6,645,267 to Dinel – shows method of fertilizing

U.S. Pub. No. 2002/0121046 to Yamashita – shows method of fertilizing

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley
Patent Examiner
Art Unit 3643



PETER M. POON
SUPERVISORY PATENT EXAMINER

12/9/04